

THE URBAN LAW FIRM

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS HEALTH AND WELFARE
TRUST; THE BOARD OF TRUSTEES OF
THE CONSTRUCTION INDUSTRY AND
LABORERS JOINT PENSION TRUST;
THE BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS VACATION TRUST; THE
BOARD OF TRUSTEES OF SOUTHERN
NEVADA LABORERS LOCAL 872
TRAINING TRUST,

Plaintiffs,

vs.

ARENA PARKS STADIUM
SOLUTIONS, INC., a Foreign corporation,

Defendant.

CASE NO:

**COMPLAINT FOR BREACH OF
CONTRACT AND BREACH OF ERISA**

[29 U.S.C. § 185(a) and § 1132(e)]

Plaintiffs, jointly and severally, complain and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount in controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

1 872 and Contractors Associations and the Trust Agreements establishing the Plaintiff Trust Funds.
2 The CBA names the Trust Funds as third-party beneficiaries of that agreement.

3 9. APSS is an employer whose employees perform work covered under the CBA.
4 Pursuant to the CBA, APSS agreed to abide by the Trust Agreements, which establish and govern
5 the operation of the Plaintiff Trust Funds.

6 10. APSS is an “employer,” as that term is defined in the CBA and related Trust
7 Agreements.

8 11. APSS is an “employer” as defined and used in Section 3(5) of ERISA, as codified at
9 29 U.S.C. § 1002(5), and therefore, APSS is “obligated to make contributions to a multi-employer
10 plan” within the meaning of Section 515 of ERISA, as codified at 29 U.S.C. § 1145. Plaintiffs
11 allege that APSS is an “employer” engaged in “commerce” in an “industry affecting commerce,” as
12 those terms are defined and used in Section 501(1) and Section 501(3) of the LMRA, as codified at
13 29 U.S.C. § 142(1) and § 142(3), and within the meaning and use of Section 301(a) of the LMRA,
14 29 U.S.C. § 185(a).

15
16 **FIRST CLAIM FOR RELIEF**
17 **Breach of Written Collective Bargaining**
Agreement and Related Trust Agreements – APSS

18 12. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs 1
19 through 11, inclusive, as though fully set forth herein.

20 13. At all times material to this Complaint, there was in effect a CBA between Local 872
21 and APSS. The CBA incorporates by reference the Trust Agreements establishing the Trusts.

22 14. APSS is an employer whose employees performed work covered under the CBA
23 between APSS and Local 872. Pursuant to the CBA, APSS agreed to abide by the Trust Agreements,
24 which establish and govern the operation of the Trusts.

25 15. By the terms and provisions of the CBA and related Trust Agreements and at all times
26 material herein, Defendant APSS was obligated to the following:

27
28 15.1 Defendant APSS was obligated to prepare and submit true, complete and

1 accurate written monthly contribution reports to the Trusts on a timely basis showing i) the
2 identities of employees performing work covered by the CBA, ii) the number of hours
3 worked by or paid to these employees, iii) the rates of pay, iv) character of hours worked
4 (e.g., straight time, over-time, etc.), and v) based upon the hours worked or amounts paid to
5 employees, the proper calculation of the fringe benefit contributions, benefits and/or
6 withholdings attributable to its employees. These monthly contribution reports are due on
7 the 10th day of each successive month;

8 15.2 Defendant APSS was required to maintain adequate records of work
9 performed by and amounts paid to its employees. APSS was obligated to permit the Trusts
10 and their agents to conduct audits of APSS's payroll and related records in order to determine
11 whether or not fringe benefit contributions were properly paid pursuant to the CBA and Trust
12 Agreements;

13 15.3 Defendant APSS was obligated to properly pay fringe benefit contributions
14 to the Trusts. Benefits and/or other withholdings were to be made on a monthly basis, and
15 at specified rates for each hour worked by or paid to applicable employees; these amounts
16 are due and payable at the Trusts' administrative offices.

17 16. On or about November 20, 2018, Plaintiffs, through their counsel, demanded APSS
18 provide payroll and related records of APSS for the time period of November 2017. Some records
19 were provided but some are still outstanding.

20 17. On or about February 12, 2019, Plaintiffs, through their counsel, demanded APSS
21 provide payroll and related records of APSS through the date of APSS' completion of work on the
22 "MGM Park Project". Plaintiffs also again requested APSS provide the remaining payroll and
23 related records for the time period of November 2017.

24 18. Despite a phone call assuring documents would be provided, APSS has not provided
25 all of the documents necessary for the audit.

26 19. Due to APSS's refusal to permit an audit, the exact amount of contributions and/or
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1 contract damages due and owing have not been ascertained at this time. These amounts, if any exist,
2 will be established by proof at trial herein or through dispositive motion following completion of an
3 audit. APSS's refusal to produce all requested documents is a breach of the CBA and Trust
4 Agreements. It is also a breach of ERISA.

5 20. It is known that APSS owes a shortage of \$120.46 for its employees' contributions
6 for the month of November 2018. The shortage also entitles the Trusts to collect a \$250.00
7 administrative fee and a \$250.00 attorney referral fee under the Trust Agreements. APSS is
8 delinquent under the Trust Agreements.

9 21. Pursuant to the terms of the CBA and Trust Agreements, APSS also promised that,
10 in the event of any delinquency, it would pay any legal and auditing costs in connection with such
11 delinquency, whether incurred before or after litigation commenced.

12 22. It has been necessary for the Trusts to engage The Urban Law Firm for the purpose
13 of obtaining the payroll and related records of APSS or its subcontractors to complete the audit,
14 collect any and all amounts due, and to otherwise enforce the terms of the CBA and Trust
15 Agreements.

16 23. Pursuant to the CBA, Trust Agreements, and 29 U.S.C. §1132(g)(2), the Trusts are
17 entitled to an award of their reasonable attorney's fees incurred to enforce the same, even if no
18 delinquency is discovered by the audit.

19 24. Pursuant to 29 U.S.C. §1132(g)(2), APSS owes to the Trusts interest, at the
20 contractual rate, on any and all unpaid contributions and liquidated damages from the dates the sums
21 were originally due to the Trusts through the date of judgment.

22 **WHEREFORE**, the Trusts pray for judgment against APSS, as follows:

- 23 1. For an order compelling APSS to submit to and cooperate with the audit of their
- 24 books, documents, and other things by the Trusts duly appointed representative;
- 25 2. For unpaid fringe benefit contributions if any, in amounts as proven;
- 26 3. For damages for breach of contract in amounts if any, as proven;
- 27 4. For liquidated damages in amounts if any, as proven;
- 28 5. For audit expenses if any, in amounts as proven;

9. For such additional relief as this Court deems just and proper.

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